

IN THE MATTER OF THE ARBITRATION BETWEEN

<u>AFSCME Council 65,</u>)	
<u>The Union,</u>)	
)	INTEREST ARBITRATION
)	AWARD
and)	
)	Assistant County Attorney Unit
)	
<u>Sherburne County,</u>)	
<u>the Employer.</u>)	BMS Case No. 07-PN-0555

Arbitrator: Barbara C. Holmes

Hearing Date: June 29, 2007

Close of Record: June 29, 2007

Date of Decision: July 09, 2007

Appearances:

For the Union: Dean Tharpe, AFSCME Council 65
Sean Dillon, Assistant Sherburne County Attorney
Suzanne Bollman, Assistant Sherburne County Attorney

For the Employer: Scott Lepak, Barney, Guzy & Steffen, Ltd.
Kathleen A. Heaney, Sherburne County Attorney

INTRODUCTION

This is an interest arbitration proceeding arising under Minnesota's Public Employment Labor Relations Act (PELRA), Minn. Stat. Secs. 179A.01 – 179A.30. AFSCME Council 65 (herein "the Union") is the exclusive representative of a unit of assistant county attorneys employed by Sherburne County (herein "the County").

The Union and the County have engaged in contract negotiations but have been unable to reach agreement on the items under consideration. The Bureau of Mediation Services (BMS) has certified the items for interest arbitration and the parties have selected the undersigned neutral Arbitrator to hear evidence and render a final and binding decision on the unresolved issues. A one-day hearing was held and each party was given a full opportunity to present its positions through the testimony of witnesses and the introduction of exhibits. The parties waived the submission of post-hearing briefs.

ISSUES AT IMPASSE

The BMS has certified the following issue for arbitration: What, if any, will be the impact of the market study results on 2007 wages for bargaining unit members?

BACKGROUND FACTS

Sherburne County is located immediately northwest of the seven-county metropolitan area of the Twin Cities. It has a population of 82,246, making it the 12th most populous county in the State. The county seat is located in the City of Elk River.

The bargaining unit represented by the Union contains three classifications - Assistant County Attorney I, II, and III. There are currently eleven employees in these classifications. For 2007 the annual full-time salary ranges for these three classifications are as follows:

Assistant County Attorney I:	\$51,006 – \$76,512
Assistant County Attorney II:	\$55,058 – \$82,585

Assistant County Attorney III: \$59,173 - \$88,758

Employees in this unit can receive collectively bargained salary increases in several different ways. A yearly cost-of-living increase in the current agreement provides for an increase of 2% in 2005, 2% in 2006, and 4% in 2007. Employees may also receive an increase when promoted to a higher classification. The promotional system is based upon years of “directly related employment service” or years of service as an Assistant Sherburne County Attorney. Promotion results in a movement to the minimum of the pay range of the new classification or a 4% increase in current salary, whichever is greater. The agreement also provides for annual merit increases of 2.4% or 4.3%.

The County also has employees in the following represented bargaining units: Highway Unit, Licensed Officers Unit, Dispatchers Unit, Licensed Supervisors Unit, Corrections Unit and Corrections Supervisors Unit. The salaries of all of the County’s employees, whether represented or not, are covered by the same merit-based compensation plan.

During the negotiations for the 2005-2007 collective bargaining agreement, the County and six of its eight bargaining units agreed that the County would conduct a classification and compensation study in 2006. The recommendations of the study were to be implemented effective January 1, 2007. These six bargaining units and the County also agreed that if the study results recommended an increase in the salary ranges, negotiations would be re-opened to determine the impact of the study results on 2007 wages.

The results of the classification and compensation study did not recommend an increase in the compensation for classifications in the Licensed Supervisor Unit, the

Dispatcher Unit or the Corrections Supervisor Unit. However, increases were recommended for classifications in the Social Services Unit, the Highway Unit, the Licensed Deputy Unit and the Assistant County Attorney Unit thereby triggering the re-opening of negotiations regarding 2007 wages. The Social Services Unit, the Highway Unit, the Licensed Deputy Unit each agreed with the County that pay ranges would be adjusted as recommended by the study and individual members would receive a wage increase only if their current salary fell below the minimum of their new range. The Union and the County were unable to reach an agreement on how to implement the results of the study and the matter was appealed to arbitration.

POSITIONS OF THE PARTIES

1. Union's position. The Union has proposed that in addition to the upward adjustment in pay ranges, each of its members' wages should also be increased by 4%. It asserts that the County has the ability to pay for the Union's proposal given its modest cost of \$26,000 and the County's good financial condition.

The Union argues that the plain language of the MOU language requires that each members' wages be adjusted. The Union claims that the negotiating history between the parties demonstrates that the Union has consistently sought a wage adjustment in addition to pay range adjustments. It also asserts that the classification and compensation study did not recommend merely adjusting the pay ranges. The Union believes that the County is incorrectly implementing the classification portion of the study without implementing the compensation portion. The Union also argues that its proposal is warranted due to

various inequities that currently exist between its bargaining unit and the County's other units. The Union claims that there is a high rate of turnover in the bargaining unit.

With respect to external equity, the Union argues that in a majority of the other counties it surveyed for comparison, the individual employees wages were increased along with the pay ranges.

2. County's position. The County has proposed to implement the study results by adjusting the pay ranges upward but not moving any of the eleven individual members' current wages upward. The only exception would be if a member's current wage is below the minimum of the new range. In that circumstance the member's wage would be increased to the minimum of the new pay range.

Given that only eleven employees are involved, the County does not dispute its ability to pay for the increase proposed by the Union. However, it asserts that the Consumer Price Index (CPI) and internal and external comparisons do not support the Union's position.

With regard to the CPI, the County argues that the cost-of-living increases this unit has received since 2005 (2% in 2005, 2% in 2006, and 4% in 2007) substantially exceed inflation. It also believes that internal bargaining unit comparisons show a strong pattern of receiving the same cost-of-living increase since 1994. Because all of the other units have accepted the County's proposed method of implementing the results of the classification and compensation study, it argues that the Union's proposal would disrupt this historical internal equity. The County also argues that its proposal will keep this bargaining unit competitive with similar classifications in other Minnesota counties.

DISCUSSION AND AWARD

Two important guidelines are generally followed by interest arbitrators in making their decisions: 1) ascertain the agreement that the parties themselves would have reached had they been able to conclude a voluntarily negotiated settlement; and 2) absent compelling reasons to do so, avoid awards that significantly alter the bargaining unit's relative standing, either internally or externally.

Interest arbitrators generally look at four factors in determining wage rates: 1) the employer's ability to pay the award, 2) adjustments in the cost of living and other economic data, 3) internal wage comparisons, and 4) external wage comparisons. In this case the Union has also raised an issue regarding the meaning of the language of the MOU entered into by the parties that provided for the 2007 wage re-opener.

1. Ability to Pay. Because the County has not denied its ability to pay the \$26,000 cost of the Union's proposal, the evidence submitted regarding this factor will not be discussed.

2. Cost-of-Living. The amount of change in the cost-of-living over the previous contractual period is often used by the parties to an interest arbitration to support their wage proposals. To the extent these costs have increased, the purchasing power of wages has decreased. The U.S. Department of Labor's Consumer Price Index (CPI) is typically used as a measure of cost-of-living increases or decreases. The only data submitted was from the County showing a 2.7% increase in the Consumer Price Index Report for All Urban Consumers as of May 31, 2007. In order to make an informed ruling on this issue, CPI data from at least the previous two years is necessary to evaluate

whether employee wages are keeping up with inflation. Because this information is lacking, this factor will not be considered.

3. Internal Comparability. The classification involved in this case is a “balanced” class under the Local Government Pay Equity Act (LGPEA) at Minn. Stat. 471.992. This law provides as follows:

Subd. 2. **Arbitration.** In all interest arbitration involving a class other than a balanced class held under sections 179A.01 to 179A.25, the arbitrator shall consider the equitable compensation relationship standards established in this section and the standards established under section 471.993, together with other standards appropriate to interest arbitration. The arbitrator shall consider both the results of a job evaluation study and any employee objections to the study. **In interest arbitration for a balanced class, the arbitrator may consider the standards established under this section and the results of, and any employee objections to, a job evaluation study, but shall also consider similar or like classifications in other political subdivisions.** (emphasis added)

Therefore, an arbitrator is not required to make the typical “pay equity” analysis performed for classes that are not balanced. Nevertheless, evidence concerning the wages negotiated by the County’s other employee groups is very relevant in determining what the Union and County would have agreed to had they been able to do so.

In this case there are two different parameters by which to measure the internal equity of the parties’ proposals. The first measure is the 2007 cost-of-living increase of 4% that has already been agreed to by the parties. The second measure is the implementation method used for the recommendations of the classification and compensation study. The parties have agreed on how the pay ranges should be adjusted, but disagree as to whether or not individual members should receive a wage increase.

The Union argues that each member should receive a 4% increase to implement the study in addition to the 4% cost-of-living increase the parties have already agreed

upon. It states that the 4% figure was obtained from language in the current collective bargaining agreement that provides a 4% increase upon promotion. The Union has offered evidence of the following inequities that it believes justifies its proposed increase:

1) under the Employer's proposal it would take 16 years to reach the top of the range while other bargaining units reach the top of their ranges in 11 years; 2) some new hires in the Social Services Unit received an extra step increase to improve retention; 3) 30%-60% of the County's other employees are at the maximum of the pay range and will benefit immediately from the pay range adjustments while only one of its members is at the top of a range; and 4) a new unrepresented labor relations attorney was hired at the top of the Assistant County Attorney III pay range.

The County submitted evidence regarding the implementation plans negotiated with its other bargaining units. The Social Services Unit, the Highway Unit, and the Licensed Deputy Unit each agreed with the County that pay ranges would be adjusted as recommended by the study and individual members would receive a wage increase only if their current salary fell below the minimum of their new range.

The County has also offered the following evidence of the wage increases given to its other employee units since 1994:

<u>Unit</u>	<u>94</u>	<u>95</u>	<u>96</u>	<u>97</u>	<u>98</u>	<u>99</u>	<u>00</u>	<u>01</u>	<u>02</u>	<u>03</u>	<u>04</u>	<u>05</u>	<u>06</u>	<u>07</u>
Social Services	2%	2%	1%/1%	2%	3%	2%	3%	3%	3%	3%	3%	2%	2%	4%
Highway	2%	2%	1%/1%	2%	3%	2%	3%	3%	3%	3%	3%	2%	2%	4%
Licensed Officers	2%	2%	1%/1%	2%	3%	2%	3%	3%	3%	3%	3%	2%	2%	4%
Corrections Supvr.	2%	2%	1%/1%	2%	3%	2%	3%	3%	3%	3%	3%	2%	2%	4%
Licensed Supvr.	2%	2%	1%/1%	2%	3%	2%	3%	3%	3%	3%	3%	2%	2%	4%
Corrections	2%	2%	1%/1%	2%	3%	2%	3%	3%	3%	3%	3%	2%	2%	4%
Dispatchers	2%	2%	1%/1%	2%	3%	2%	3%	3%	3%	3%	3%	2%	2%	4%
Non-Union	2%	2%	1%/1%	2%	3%	2%	3%	3%	3%	3%	3%	2%	2%	4%

I find that the inequities asserted by the Union are insufficient to overcome the evidence submitted by the County for the following reasons: 1) the County has a remarkably clear history of treating its employees the same with respect to cost-of-living wage increases; 2) the County has negotiated the same implementation plan with its three other bargaining units that had pay ranges adjusted upward; and 3) no evidence was provided from the specific recommendations of the study that would justify departing from the County's clear history of treating its bargaining units similarly with respect to wage increases.¹ In *Law Enforcement Labor Services and Wright County*, BMS Case No. 06-PN-0882 (2007), Arbitrator Ver Ploeg, finding a similar "unwavering pattern" of uniform wage settlements since 1994, stated:

"To award wages and benefits greater than these employees could have negotiated, or greater than other employee groups have negotiated, risks undermining the collective bargaining process and provoking yet more interest arbitration. Certainly it is true that one group cannot automatically be bound to others' settlement patterns. However, the fact that a pattern is uniformly maintained for almost all of a large number of employees is strong evidence that those terms are appropriate under existing conditions. Such evidence obliges an arbitrator to closely scrutinize the reasons for deviating from those terms for a select group of employees."

For purposes of internal equity the County's proposal is more reasonable given the internal pattern of historical wage settlements and study implementation plans for all of the County's employees.

4. External Comparability. Minn. Stat. Sec. 471.992 requires an analysis of wages of similar employees in comparable work situations of different employers when the arbitration concerns a "balanced" class. Most external comparisons are made to

¹ This arbitrator was not provided with a copy of the classification and compensation study.

entities that are similar in function, size and financial resources. Geographical proximity of the comparison entities is also relevant as most labor markets are locally based.

The Union provided evidence of a telephone survey of assistant county attorney units within a geographical proximity to Sherburne County. The units were surveyed as to how a classification and compensation study was implemented when it recommended a pay range increase. The Union found that each of the seven counties surveyed provided for some sort of increase to an individual member's salary when pay ranges were adjusted upward.

The County argues that external wage comparisons are not relevant because the parties have agreed to increase the pay ranges in the same manner. Nonetheless, it submitted evidence asserting that with the new pay ranges the Union's members in the Assistant County Attorney I classification would have the highest minimum and maximum salary within the Economic Development Region 7W containing Sherburne, Benton, Stearns and Wright Counties.

The County also submitted data from a larger comparison group of Anoka, Benton, Carver, Chisago, Hennepin, Isanti, Ramsey, Scott, Stearns, Washington, and Wright Counties. This comparison showed that the Union's members, prior to any pay range adjustment, were at 89.9% of the average minimum salary and 98% of the average maximum salary for all assistant county attorney classifications in the group.

The Union's evidence is interesting on its face; however, it lacks the sort of detail necessary to support an increase beyond what the internal comparisons clearly support. The specifics of the classification and compensation studies for the comparison counties and this County would be needed in order to adequately evaluate the Union's argument.

I find that the evidence submitted by the County supports its argument that overall wages for the Union's members are within the competitive range of the external market. Therefore, based upon external comparisons, the County's proposal for implementation of the study is more reasonable.

5. Language of the MOU. There are several common methods for implementing pay range increases. The "no cost" method makes no adjustment to an individual employee's wage, even if some are below the minimum of the new range. These employees advance into the new range via other mechanisms for wages increases. The "low cost" method of implementation is the method proposed by the County. No adjustments are made to an individual employee's wage unless it is below the minimum of the new range. These employees' wages would be increased to the minimum of the new pay range. The "comparable step" method increases all employees' individual wages by placing them on the same step in the new pay range that has been adjusted upward.

The Union has made the argument that the plain language of the MOU supports its proposal for an increase in each member's individual salary in addition to the increases to the pay ranges. I do not find support for the Union's position in the pertinent portion of the MOU that states:

Should the results of the study indicate an upward wage adjustment, the employer agrees to a contract re-opener limited to the period of January 1, 2007 through December 31, 2007 for the limited purpose of negotiating the impact of the study results on 2007 wages for bargaining unit members.

I find that the parties merely agreed to meet and negotiate what the impact of the study would be on 2007 wages. They could have agreed to any of the implementation

methods listed above or devised a unique and/or individualized implementation plan. Similarly, nothing in the MOU language limits this award.

CONCLUSION

In this case the County's ability to pay the award was not challenged. A review of the CPI data neither supported nor refuted either party's position. However, I find that a thorough consideration of the internal and external comparison evidence supports the County's position regarding the implementation of the classification and compensation study. The language of the County's proposal as set forth in its submission to the BMS on February 13, 2007, is hereby awarded.

Dated: _____, 2007

Barbara C. Holmes
Arbitrator